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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

An Industry Coordination Committee)
System for Broadcast Digital)
Television Service)

ET Docket No. 99-34

To: The Commission

**COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB") file these comments supporting the establishment of an industry coordination committee to assist in the implementation of the digital television ("DTV") service – a step we have proposed since 1995. The Commission's Notice of Proposed Rule Making ("Notice")¹ in the above-captioned proceeding proposes a fairly elaborate coordination committee structure, based on earlier proposals submitted by the broadcast industry before the DTV transition was underway. At this point in the digital transition, MSTV and NAB urge the Commission to adopt a modified committee structure better suited to today's needs. Specifically, MSTV and NAB believe that a streamlined coordination committee structure that is agile and quickly operational would best serve the Commission and the industry.

¹ *An Industry Coordination Committee System for Broadcast Digital Television Service*, Notice of Proposed Rule Making, ET Docket No. 99-34 (adopted Jan. 28, 1999).

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List A B C D E

I. The FCC Should Support A Coordination Committee For The Future.

In 1995, MSTV, NAB, and other broadcasters began to urge FCC endorsement of an industry DTV coordination committee structure tailored for the very early stages of DTV implementation.² A great deal has changed since then. The Commission has established detailed technical policies for DTV stations, including the 2%/10% *de minimis* interference standard, the maximization and beam-tilting policies to permit power increases by UHF DTV stations, and the complex processing guidelines and priorities for DTV applications. In the 1997 Budget Act, Congress imposed statutory deadlines for the rollout of DTV, and by November 1 of this year, network affiliates in the top 30 markets are required to complete their DTV construction and all other commercial stations must submit their DTV applications. Not only is the DTV transition well on its way, but the allotment/assignment process is more complex and proposed modifications more difficult to evaluate than anticipated just two years ago. The industry coordination committee structure should be set up quickly and should be flexible enough to cope with the DTV implementation process as it stands today.

Although the coordination committee process is getting a late start, we continue to believe that there is a need for an independent national body to analyze proposals for DTV allotment/assignment and operational changes to determine whether they are consistent with the Commission's rules, whether there are conflicts with other parties or proposals, and whether any

² See Broadcasters' Proposed ATV Allotment/Assignment Approach, MM Docket No. 87-268 (January 13, 1995), at 29-32 (proposing the establishment of an industry coordination committee to make recommendations to the Commission on DTV assignment issues). We elaborated further on these ideas in comments on the Sixth Further Notice in the DTV proceeding. See Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking, MM Docket No. 87-268 (November 22, 1996), at 58-64. On January 10, 1997, MSTV, NAB and several other broadcast organizations filed a petition for rulemaking setting forth specific proposals for establishing a system of non-governmental coordination committees to process and evaluate proposed changes to the Commission's DTV Table of Allotments and other related issues. Broadcasters Caucus Petition for Further Notice of Proposed Rulemaking, MM Docket No. 87-268 (January 10, 1997).

such conflicts may be resolved through technical solutions. As the DTV transition has progressed, broadcasters have filed DTV applications and modification requests with engineering statements that use differing methodologies, that do not benefit from access to the FCC database (and therefore may not reflect other authorized or applied for facilities that may be relevant), and that incorrectly certify compliance with the FCC rules. We believe that an independent, and voluntary, certification process implemented by a coordination committee would minimize such inconsistencies. We emphasize that use of this certification process should be voluntary. Stations stand to gain by participating in the coordination process through reduced FCC processing time, fewer conflicts with other stations and spectrum users and reduced legal expenses. The availability of an independent certification process also will ease the burden on Commission resources, while allowing the Commission to retain control of application processing.

At this point, we believe that the most critical step is the selection of a National Coordination Committee, which would be overseen by a Governing Council. Because of the impending DTV application and construction deadlines, we urge the Commission to act expeditiously in this matter. A National Coordination Committee could be organized fairly quickly, perhaps even in time to assist applicants in meeting the November 1, 1999 deadline, but certainly in time to help applicants that modify or file applications in the aftermath of the November 1 filings. Experience with the National Coordination Committee will permit the Commission, the broadcast industry and others to evaluate the effectiveness of its structure, to consider alternative structures and to develop a national or national/regional structure to best serve the needs of the affected industries and the Commission as the DTV transition progresses.

II. The Initial Committee Structure Should Be Simple and Quickly Effectuated.

MSTV and NAB support a coordination committee structure that is simple, efficient, and capable of growth and change. As an initial step, the Commission should solicit applications for a Governing Council and a National Coordination Committee. The National Coordination Committee would ensure consistency between the Committee's database and the FCC's database by updating that Committee's database with the latest applications and authorizations. It would also ensure the proper and transparent use of the FCC's methodology and a fair processing system. The role of the National Coordination Committee would be to certify compliance with the Commission's technical rules and to assist licensees in complying with those rules. The Governing Council would exercise an oversight function with respect to the National Coordination Committee, and would bring to the Commission's attention any problems that might arise concerning the Committee's role.

Once this initial structure is functioning, the Governing Council could develop regional committees, where appropriate. For example, it could be particularly appropriate to empanel regional committees in situations where market-wide channel changes are being considered.

Structure and Selection of the Governing Council. The Governing Council should consist of trade association representatives (or other individuals sponsored by those organizations) from the affected industries. Rather than adopting eligibility criteria, we urge the Commission to issue a public notice stating that it intends to accept representatives from each of the most widely representative trade associations of the affected industries.³ The Governing

³ The Council might, for example, include representatives of such organizations as NAB, MSTV, the Association of Local Television Stations, Inc. ("ALTV"), the Association of America's Public Television Stations ("APTS"), the Association of Public-Safety Communications Officials-International, Inc.

(footnote cont'd)

Council would retain the discretion to add additional representatives from affected industries to the Council upon a vote of the Council members. If appropriate, the Council could institute a system of several permanent members, as well as a number of rotating members from affected industries.

Once the initial members had been selected to serve on the Governing Council, these members would determine the Council's structure. Council members would volunteer their time and the Council would be responsible for its own financial support. After establishing the coordination structure, the Governing Council would exercise an oversight function with respect to the National Coordination Committee. In addition, the Governing Council could create regional coordination committees in the future, if experience with the National Coordination Committee shows that such committees are necessary.

Selection and Role of National Coordination Committee. MSTV and NAB generally support the eligibility criteria for selecting members of a National Coordination Committee proposed by the Commission in the Notice.⁴ The Commission should solicit applications for this Committee and should select individuals within the broadcasting industry with the most technical knowledge with respect to broadcast issues and with substantial and successful experience working with the FCC allotment/assignment database, FCC methodology and DTV allotment/assignment-related issues.

(footnote cont'd)

("APCO"), the Association of Federal Communications Consulting Engineers ("AFCCE"), the National Translator Association ("NTA"), and the Community Broadcasters Association ("CBA").

⁴ See Notice, at ¶ 26.

The National Coordination Committee would fulfill a strictly technical role and would operate according to the established FCC methodology.⁵ Specifically, the Committee would evaluate proposed changes to the DTV Table or other technical proposals impacting the digital television service and, if appropriate, would certify compliance with the Commission's rules or assist industry members in complying with the rules. Broadcasters would not be required to use the National Coordination Committee to evaluate their DTV proposals, and broadcasters relying on negotiated agreements to exceed the Commission's interference standards should file their proposals directly with the Commission, without Committee review. The principles of fairness and openness would guide the Committee in all its activities. In evaluating DTV proposals, all affected and interested parties should be invited to participate in the Committee's work and receive an open airing of their views and concerns.

Broadcasters who choose to utilize the National Coordination Committee could submit their proposals to the Committee prior to filing with the Commission. The Committee would evaluate any proposed changes to the DTV Table, according to the Commission's methodology, in terms of coverage, interference and the impact on channel availability for others. Based on this assessment, the Committee either would certify that the proposal complied with the Commission's technical rules or would determine that it did not. Upon a finding of non-compliance, the Committee would identify the area of non-compliance and could suggest alternative allotments and/or operational parameters that would comply with the rules. The broadcaster (or LPTV, public safety or other user) who submitted the proposal then would have the option of either revising its proposal or filing the original proposal with the Commission

⁵ The software used by the Committee to evaluate compliance with the FCC rules should be submitted to and on file with the Commission. The software also should be made available, on a reasonable cost-recovery basis, to any interested parties.

disclosing that the Committee's certification had been withheld. Those applications certified by the Committee as compliant with FCC rules would then be filed with the Commission to be processed expeditiously.

The National Coordination Committee would assist the affected industries, the Commission and the public by facilitating the smooth rollout of DTV and permitting modifications to the DTV Table that would improve DTV service, avoid interference and otherwise serve the public interest. By exercising this certification/clearinghouse function, the Committee would, for example:

- help broadcasters avoid applications that would be mutually exclusive because they would cause cumulative interference to a third station to exceed the 10% *de minimis* interference cap;
- minimize the potential for petitions to deny or FCC questions that could entail processing delays or denial of applications;
- help broadcasters organize joint tower arrangements that entail channel changes;
- provide lists of available alternative channels to licensees wishing to change channels and/or operating parameters;
- maintain and make available for public inspection a file of all coordination requests and the resulting coordination reports, so that broadcasters can review the Committee's recommendations with respect to particular requests;
- maintain and make available for public inspection a list of all certified proposals, including the date on which the Committee's certification of each proposal will expire;
- maintain a database of authorized and applied for⁶ DTV and NTSC facilities so that broadcasters can easily determine what effect a proposed change will have on other authorized and applied for facilities;
- assist LPTV and translator licensees to find alternative channels; and
- assist public safety licensees and broadcasters to avoid mutually destructive interference.

⁶ The term "applied for" references proposals that have been accepted for filing by the Commission.

The Committee's role should be limited to providing a technical evaluation of the DTV proposals submitted by the industry according to the published FCC methodology. The Committee should not facilitate negotiations among licensees in any way other than providing technical information regarding alternative allotments and operating parameters upon request. Any more active role could embroil the Committee in time-consuming disputes and could slow the coordination process. Limiting the Committee's role to technical matters would promote ease of administration, and would prevent the Committee from being subject to the obligations of the Federal Advisory Committee Act ("FACA") (see below).⁷

Processing Order and Timeliness. The National Coordination Committee generally should be required to respond to proposals within a specified period of time, such as within 10 days. Complicated proposals implicating many stations might take longer. Because new proposals will impact the validity of the Committee's technical evaluation, any certification should be valid for only a limited time, such as 15 to 30 days. If the broadcaster or other applicant does not file its proposal with the Commission within this time period, the certification should expire.

At this phase in the transition, MSTV and NAB believe that the Committee should process requests in the order they are received.⁸ We support the Commission's proposal in the Notice that processing logs should be maintained and made available to the Commission upon request,⁹ and should be available to broadcasters and the public for inspection. The

⁷ See 5 U.S.C. Appendix.

⁸ Although we once supported special processing priorities for joint tower projects and market-wide solutions, we now think that implementation of such priorities would be too complex and lead to questions about the fairness of the coordination process. If the Governing Board and the National Coordination Committee determine, based on experience with the coordination process, that processing priorities are appropriate or that certain special circumstances warrant processing priority in a particular instance, they should retain the discretion to implement such priorities.

⁹ See Notice, at ¶¶ 23-24.

openness and availability of this processing information should instill confidence by broadcasters and others in the fairness of the Committee and encourage its broad use. We also support the proposal that the Commission investigate complaints relating to processing order and speed.¹⁰

Fees. Consistent with the Commission's proposal in the Notice, we believe that the National Coordination Committee should set reasonable, cost-based fees.¹¹ Naturally, the fee will vary with the number of stations involved and the complexity of the request.

Other Functions. The National Coordination Committee could, as the Commission proposes, assign unique Program and System Information Protocol ("PSIP") identifiers¹² – also known as MPEG Transport Stream IDs ("TSIDs"), which are part of the FCC transmission standard – recognizing that many DTV stations will have already gone on the air by the time the coordination structure is up and running. However, as we have recommended in previous filings, we continue to believe that TSID assignments, since they must be coordinated with TSIDs assigned in neighboring countries as well as coordinated with cable system programming, would be more properly administered by the FCC as part of the DTV license. With respect to the naming and numbering of channels,¹³ this is fully specified in the normative portion of the ATSC PSIP Standard (Doc. A/65), whose full implementation we fully support. Therefore, we see no role for the Committee in this area.

Applicability of FACA. The purely technical coordination structure urged herein would not be subject to FACA because the Committee would not make policy recommendations

¹⁰ See *id.*, at ¶ 24.

¹¹ See *id.*, at ¶ 22. As noted above, the software used by the Committee to evaluate compliance with the FCC rules should be made available to any interested parties on a reasonable cost-recovery basis. The precise charges for the software should be determined by the Governing Council.

¹² See *id.*, at ¶ 18.

¹³ See *id.*

to the Commission¹⁴ and would not be controlled or managed by the Commission.¹⁵ The Commission would establish the framework for the coordination structure and select the National Coordination Committee and the initial Governing Council members, but the coordination and certification functions would be conducted and managed independently of the Commission. The Governing Council, rather than the Commission, would exercise direct oversight with respect to the Committee. The Committee would not advise the Commission, but would use the Commission's database and methodology to evaluate broadcasters' DTV proposals. The Committee would fulfill a strictly technical role limited to applying the Commission's methodologies and developing potential technical solutions consistent with FCC rules. Broadcasters would not be required to utilize the Committee, and would not have to implement any technical solutions the Committee proposed. And, of course, the Commission itself would retain ultimate decision-making authority on all DTV application and implementation matters.¹⁶

* * * *

For the foregoing reasons, MSTV and NAB support the establishment of a streamlined coordination structure, as described above.

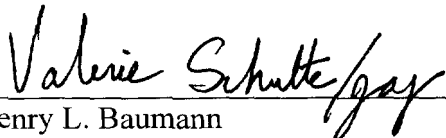
¹⁴ See, e.g., *Association of American Physicians and Surgeons v. Clinton*, 997 F.2d 898, 914-15 (D.C. Cir. 1993).

¹⁵ See, e.g., *Washington Legal Foundation v. U.S. Sentencing Commission*, 17 F.3d 1446, 1450-51 (D.C. Cir. 1994).

¹⁶ See Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking, MM Docket No. 87-268 (November 22, 1996), at 58-64 (explaining FACA implications of coordination committees).

Respectfully Submitted,

NATIONAL ASSOCIATION OF
BROADCASTERS

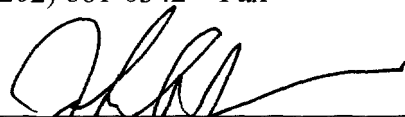


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